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May 19, 2000

OPEN
00188100

Administrative Actions & Appeals Division
United States Department of Education
P.O. Box 23800
L'Enfant Plaza Station, S.W.
Washington D.C. 20026

Sent by certified mail
& faxed

And

Administrative Actions & Appeals Division
United States Department of Education
ROB-3 GSA/NCR Building, Room 3923
7th & D Streets S.W.
Washington D.C. 20407

Sent by overnight mail
& faxed

ATTN: Mary E. Gust, Acting Director

Dear Ms. Gust:

Your letter of April 28, 2000 directed to Dr. James Ross, President of Mount St. Clare College, has been directed to our office. I have reviewed your letter, intended fine and the specifics upon which you base your findings for this fine.

Previously, on May 8, 2000, we filed a Notice of Appeal of the Final Program Review Determination (FPRD). We have been advised that those matters can be included and considered as a part of this appeal process.

In that appeal, we wanted to challenge the Department of Education's failure to address, in its report: (1) the procedures used by the college to develop its annual report; (2) the classification and/or severity of the offenses they believe were improperly omitted; (3) the college's methodology for determining whether an offense was founded (not clearly defined in the federal legislation or departmental regulations); (4) the breadth of the safety information made available to students and the manner in which it was disseminated; and (5) the fact that there have been no hate crimes on campus since the inception of this litigation.

(2)

As a result of those oversights, we believe that the Administrative Actions and Appeals Division ("AAAD") did not have a full and complete picture of the college's practices with regard to Campus Security procedures. Mount St. Clare College does not believe that it has substantially mis-represented its campus security statistics or that the actions of the college warrant the imposition of the proposed fine.

Based upon our review of the FPRD and your letter of April 28, 2000 establishing a preliminary fine of \$25,000.00, the college hereby gives notice that it is requesting a hearing, as provided for by law. Please refer this matter to the Office of Hearings and Appeals. Any notice should be sent in care of our offices.

Very truly yours,

PILLERS LAW OFFICES


G. Wylie Pillers, III

GWPIII/dmd

XC: Dr. James Ross

Paul Bookmeyer

David L. Womack

c/o Mount St. Clare College
400 North Bluff Boulevard
Clinton, Iowa 52732
Mailed 5-19-00

Renee Orleans

c/o United States Department of Education
Office of the General Counsel
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110
Mailed 5-19-00 & faxed to 202-401-9533



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- _____

APR 28 2000

Dr. James Ross
President
Mount St. Clare College
400 North Bluff Boulevard
Clinton, Iowa 52732

Sent by Certified Mail
Return Receipt Requested
Z 258 306 368
OPE ID: 00188100

Dear Dr. Ross:

This letter is to inform you that the United States Department of Education (Department) intends to fine Mount St. Clare College (MSC) a total of \$25,000 based upon the three violations outlined in Part I below. This fine action, as outlined in Part II below, is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070 *et seq.*, (Title IV, HEA programs). Title IV, HEA program regulations permit a maximum fine amount of \$25,000 for each violation. 34 CFR 668.84. As detailed in Part I of this notice, this fine action is based on the institution's failure to comply with the requirements of the Campus Security Act as set forth in Section 485 (f) of the HEA and in 34 CFR 668.47. In this case, MSC's substantial misrepresentation of its campus security statistics warrants the imposition of a fine. 34 CFR 668.72 (l).

I.

The Department is taking this action pursuant to findings cited in the Department's Final Program Review Determination (FPRD) letter issued on March 24, 2000 (a copy of the March 24, 2000 FPRD is enclosed). The FPRD discussed findings as a result of a program review at the institution in July 1999. The Department undertook the program review to investigate a parental complaint concerning the institution's compliance with the Campus Security Act requirements. The FPRD found the following regulatory violations concerning the institution's compliance with the Campus Security Act.

1. Crime Statistics Not Accurately Disclosed

The Department's FPRD found that MSC did not adequately disclose the statistics of the crimes required to be reported in the institution's annual campus security report. Specifically, MSC failed to report (or timely report) a total of 15 crime incidents occurring on the MSC campus since the 1993-94 academic year. Furthermore, institutional officials used the wrong reporting period and the wrong standard for reporting crime incidents. Finally, the institution's campus security report did not address the requirement to disclose whether any of the reported crimes manifested evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act.

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a. All crime incidents not reported

As a result of the program review, the Department learned MSC did not have a regular process for communicating with the Clinton Police Department concerning reports to the Police of the specified crimes required to be reported under the Campus Security Act. In fact, a number of the incidents omitted from MSC's crime statistics were reported to the Clinton Police but were not included in MSC's campus security reports.

The 15 incidents omitted by the institution since 1993 included seven aggravated assaults, three forcible sex offenses, four burglaries and one arrest for liquor law violations. Ten of these incidents (the aggravated assaults and sex offenses) either involved bodily injury or the threat of bodily injury. Although MSC corrected these statistics in its written program review responses, the corrected statistics do not appear on the institution's Internet website report of those statistics. The 15 incidents are as follows:

In the 1993-94 academic year, the institution reported no crimes when, in fact, one burglary (12-25-93) should have been reported.

In the 1994-95 academic year, the institution reported two aggravated assaults and one arrest for weapons law violations. However, MSC should have reported three aggravated assaults (Unknown, 1-20-95, and 9-2-94), one forcible sex offense (9-18-94), two burglaries (12-17-94 and 2-22-95), and one weapons arrest (9-2-94).

In the 1995-96 academic year, MSC reported no crimes. However, the institution should have reported one forcible sex offense (9-9-95), two aggravated assaults (11-1-95 and 7-26-96), and one burglary (2-8-96).

In the 1996-97 academic year, the institution reported one motor vehicle theft (10-19-96). However, MSC should have reported three aggravated assaults (10-16-96, 4-17-97, and 6-13-97) in addition to the motor vehicle theft.

In the 1997-98 academic year, MSC reported no crimes. However, the institution should have reported one aggravated assault (9-12-97), one forcible sex offense (8-28-97) and one liquor law arrest (2-24-98).

The more serious of these omitted incidents are discussed below.

i. 1/20/95 incident or Unknown Aggravated Assault

The institution's July 31, 1995 campus security report listed two aggravated assaults for the 1994-95 academic year. The documents in MSC's files concerning the January 20, 1995 incident reveal it to be a domestic violence incident. MSC's administrative/judicial board files contain memos concerning this incident.

The institution indicated in its program review response of September 30, 1999 that the January 20, 1995 incident was an aggravated assault and that MSC would revise its reported crime statistics to include this incident. This response seems to indicate that the January 20, 1995 incident had not been previously reported. However, MSC did not explain what incident was represented by the second reported aggravated assault in

1994-95. Thus, it appears MSC either failed to report the second aggravated assault or could not account for the incident that it did report.

ii. 10-16-96 Aggravated Assault

The October 16, 1996 aggravated assault incident is discussed in the institution's judicial board files. However, no formal incident reports were filed regarding this incident. The judicial board information that could be located regarding this incident indicates that a student was found guilty of possessing a kitchen knife. There are two very brief note summaries from a residence hall resident assistant. In those notes, it appears two individuals (at least one of whom was an MSC student) exchanged words in the residence hall parking lot and one of the individuals (an MSC student) pulled out a 13" butcher knife and threatened the other individual. MSC should have reported the incident in its annual report of campus crime statistics.

iii. 4-17-97 Aggravated Assault

The Clinton Police reported this incident as an aggravated assault. Better communication with the Clinton Police Department may have allowed institutional officials to become aware of this incident and include it in the annual report of campus crime statistics.

iv. 6-13-97 Aggravated Assault

There is a residence hall incident report of an aggravated assault on June 13, 1997. It also appears the student involved was placed on conduct probation and was dismissed from school after a subsequent physical assault incident on September 12, 1997.

The June 13, 1997 incident involved a student threatening to hit another student with a broomstick (and may, in fact, have hit him). The perpetrator student then tried to attack the other student with a fire extinguisher and a pipe. The perpetrator student was also involved in the October 16, 1996 incident. MSC should have reported the incident in its annual report of campus crime statistics.

v. 9-18-94 Forcible Sexual Offense

The August/September 1994 residence hall incident report summary for September 18, 1994, lists a report of a sexual assault. Despite the presence of this information in institutional files, MSC did not report this incident in its annual crime statistics. The institution's program review response of September 30, 1999 indicates that MSC officials "inadvertently omitted" the incident from its reports.

vi. 9-9-95 Forcible Sexual Offense

The Clinton Police reported this incident on September 9, 1995, as a forcible sex offense. Better communication with the Clinton Police Department may have allowed institutional officials to become aware of this incident and include it in the annual report of campus crime statistics.

In its September 30, 1999 program review response, MSC indicated that the information available concerning this incident was insufficient to determine whether this was a reportable offense; thus, the school did not report the incident.

In its January 14, 2000 program review response, MSC indicated it would list this incident as a non-forcible sexual offense. However, the institution presented no evidence to show the incident involved either incest or statutory rape nor did MSC provide any other explanation as to why the incident should be classified as a non-forcible sexual offense when Clinton Police did not classify it that way. The institution did not deny this incident occurred on MSC's campus, so the FPRD required the institution to report the incident as a forcible sexual offense.

vii. 8-28-97 Forcible Sexual Offense

The August 28, 1997 incident involved the reported sexual assault of a female student in her residence hall room. The alleged student perpetrator in this case was arrested and was scheduled to go on trial in December 1997. On the verge of trial, the victim asked the state's attorney to drop the charges because she did not want to go through a trial. Not only did MSC fail to initially report this incident in the next campus crime report, the male student involved in this case was appointed as a resident assistant in the residence hall for the following academic year.

In its September 30, 1999 program review response, MSC indicated that this incident was "inadvertently omitted" from the institution's June 1, 1998 report, but that the institution had amended its crime statistics so that the incident was reported in the campus security report for June 1, 1999.

b. Wrong standard and wrong reporting period used in report

In addition to the failure of the institution to report 15 crime incidents occurring on campus, MSC employed an overly strict standard for reporting incidents in its crime statistics.

In the crime statistics section of each of MSC's annual campus security reports prior to the report issued June 1, 1999, MSC indicated it did not consider a crime "reported" (and, therefore, included in the campus security report crime statistics) unless: (1) the Clinton Police Department investigated an incident and determined a crime occurred; or (2) the Clinton Police Department notified the College that it documented a report of a criminal offense which occurred "on campus" as defined by the Campus Security Act. The actual application of this practice may have been even stricter than the above written policy. In the institution's November 3, 1998 correspondence with the Department, the Dean stated that MSC "only reported crimes where the perpetrator was found guilty." While on-site, the Dean of Students told reviewers that unless a student went to the Clinton Police and pressed charges, an otherwise reportable incident would not appear in the campus security report statistics. These standards clearly violate the regulatory requirements of 34 CFR 668.47 (a)(6)(i). The regulations require an institution to report "statistics concerning the occurrence on campus of the [listed] criminal offenses reported to local police agencies *or to any official of the institution who has significant responsibility for student and campus activities.*" (emphasis added).

The institution did change its standard for reporting crime incidents as of its June 1, 1999 campus security report, after the institution had received correspondence from the Department alerting MSC to the Department's investigation of a parental complaint.

In addition to using the wrong standard for including crime incidents in the statistical summary section of its campus security report, the institution reported statistics using the incorrect time frame. The institution reported its statistics on an academic year basis rather than on a calendar year basis, as required by 34 CFR 668.47 (d).

2. Campus Security Report Information Not Made Available to Prospective Students and Employees

The institution did not adequately inform prospective students and employees of the campus security report's availability, provide them with a summary of the report's contents nor afford them the opportunity to request a copy of the campus security report information.

Admissions staff informed reviewers during the on-site review that MSC directed prospective students who had specific questions concerning campus safety to the Office of Student Affairs. None of the admissions materials provided to prospective students informed students of the availability of the campus security report. Beginning in the Fall of 1999, MSC informed prospective students of the availability of the campus security report through a notification statement in the admissions pamphlet that is mailed to all prospective students. However, the "notification" is in small typeface and is hidden underneath informational reply cards. The statement also does not inform students how they may request a hard copy of the report.

Beginning in the Summer of 1999, the institution posted the campus security report to its Internet website. However, the statistical information in the institution's written program review responses differs from the information on the Internet website. The institution's disclosure of its crime statistics and related policies should be disclosed in a consistent manner regardless of whether prospective students and employees access this information in a hard copy format or via the Internet.

3. Statements of Policy Omitted or Incomplete

The institution omitted or submitted incomplete statements of policy required by the regulations to be included in the campus security report. The campus security reports did not contain information (or contained incomplete information) regarding four policy statements required under 34 CFR 668.47(a). The institution did not include this information until its campus security report issued on June 1, 1999. The four policy statements involved are discussed below.

i. Timely Warning Information

The institution's campus security reports did not contain information, required under 668.47 (a)(3)(ii) and 668.47 (e), regarding MSC's policies concerning the procedures for timely warning the institutional community of crimes listed in 668.47 (a)(6) that institutional officials consider to represent a threat to students and/or employees. Such warnings should be made in a timely manner to prevent the occurrence of similar crimes.

ii. Sexual Assault Prevention Programs and Procedures for Reporting a Sex Offense

The regulations under 34 CFR 668.47(a)(12) outline the specific requirements for policy statements concerning the prevention programs and procedures in cases of sexual assault. Of particular importance are the policies notifying students of counseling options, campus disciplinary procedures, and the procedures for changing academic and/or living arrangements, if necessary and reasonably available.

The institution's campus security report did not contain these required policy statements until the June 1, 1999 campus security report. The omission of the required policy statements in this area of concern is even more troubling considering the fact that institutional officials "inadvertently omitted" three reported sexual assaults from MSC campus crime reports since 1993.

iii. Security, Access, Maintenance of Campus Facilities

The institution included these statements, required under 34 CFR 668.47(a)(2), in MSC's 1998-99 Student Handbook but failed to include them in the Campus Security Act brochure. The failure to include these in MSC's campus security reports prevented prospective students and employees from being aware of these procedures.

iv. Informational Programs

The institution omitted descriptions, required under 34 CFR 668.47(a)(4), concerning the type and frequency of programs designed to inform students and employees about campus security procedures and practices and crime prevention.

II.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 CFR 668.92. Pursuant to the Secretary of Education's decision in the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether a school is above or below the median funding levels for the Title IV programs in which it participates.

The latest year for which complete funding data is available is the 1997-98 award year. According to the Department's records, MSC received approximately \$326,701 in Federal Pell Grant funds. The institution also received approximately \$2,013,643 in Federal Family Educational Loan (FFEL) funds. The amount of Title IV, HEA program funds received by or on behalf of students attending MSC is set forth in detail in an enclosure to this letter (Attachment A). The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$414,442. For institutions participating in the Federal Family Education Loan program, the median funding level is \$984,106. Accordingly, the Department will consider MSC a large institution because its overall funding level exceeds the median funding levels.

The institution's failure: (1) to accurately disclose its campus crime statistics; (2) to adequately inform prospective students of the availability and content of the campus security report; and (3) to completely disclose all required campus security policies denies prospective and current students and employees the opportunity to make

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informed judgments about the relative security of the campus environment and to make personal security decisions. The false/incomplete picture MSC presents is even more detrimental in light of the fact that the school portrays itself as a "safe" place to attend school. The institution's Internet website home page touts, "MSC Campus is safe: In a 1997 national survey of micropolitan, Clinton, Iowa, was ranked number one in public safety." The omission of crime statistics from the annual campus security report could be viewed as furthering MSC's image of a "safe" campus. The institution's failure to comply with the provisions of the Campus Security Act outlined in Section 485 (f) of the HEA and 34 CFR 668.47 amounts to a substantial misrepresentation under 34 CFR 668.72 (l) and warrants the imposition of a fine, as described below.

After considering the gravity of the violations and the size of the institution, I have set the fine amount at \$25,000. I have assessed \$15,000 for the institution's failure to accurately disclose crime statistics; \$5,000 for the institution's failure to provide its campus security reports to prospective students and employees; and \$5,000 for the institution's omission or incomplete statement of the required campus security policies.

The fine of \$25,000 will be imposed on May 22, 2000 unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. MSC may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If MSC chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Division
United States Department of Education
P.O. Box 23800
L'Enfant Plaza Station, SW
Washington, DC 20026

If MSC wishes to make its request by using an overnight mail service other than the U.S. Postal Service, my address is:

Administrative Actions and Appeals Division
United States Department of Education
ROB-3, GSA/NCR Building, Room 3923
7th and D Streets, SW
Washington, DC 20407

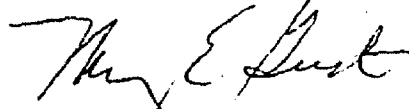
Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of the MSC's case to a hearing official who will conduct an independent hearing. The institution is entitled to be represented by counsel at the hearing, and otherwise during the proceedings. If MSC does not request a hearing, but submits written material instead, I will consider that material and notify the institution of the amount of fine, if any, that will be imposed.

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ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT MSC SUBMITS
MUST BE RECEIVED BY **MAY 22, 2000**; OTHERWISE, THE FINE WILL BE
EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of MSC's rights with
respect to these actions, please contact Susan Crim of my staff at (816) 880-4063.

Sincerely,



Mary E. Gust, Acting Director
Administrative Actions and Appeals Division

Enclosure

cc: Harold Jenkins, Assistant General Counsel, OGC
Angela Torruella, Director SE Case Management Division
Ralph A. LoBosco, Area Case Director, Kansas City Case Management Team
Dennis Mertes, Co-Team Leader, Kansas City
Vince Robinson, Co-Team Leader, Washington, DC
Steve Dorssom, Institutional Review Specialist, Kansas City Case Management
Team

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AAED Institutional and Federal Funding Data		Find Record	17
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0440	00188100	Institution	Mount Saint Clare College
0000	Clinton	STATE	IA

1997-98 FFEL (Total Amount Guaranteed):	\$2,013,643
1997-98 Direct Loan (Total Amount Approved):	\$0
Total FFEL + DL, this Institution:	\$2,013,643
Median FFEL + DL, All Institutions:	\$984,106
1997-98 Pell Grant (Accepted Awards), this institution:	\$326,701
Median Pell Grant, All Institutions:	\$414,442
1997-98 Campus-Based Funding, this Institution:	\$81,302
Median Campus-Based Funding, All Institutions:	\$163,279
Total Funding, this Institution:	\$2,421,646

Note: Institutional funding amounts represent a "snapshot" of 1997-98 funding received by the institution as of September, 1998. These amounts may have changed due to adjustments made by the institution or ED since then.